

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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David Birnbaum and Dabir International, Ltd.

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| <p>GUGGENHEIM CAPITAL, LLC, <i>et al.</i>,</p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p style="text-align: center;">- vs. -</p> <p>CATARINA PIETRA TOUMEI, <i>et al.</i>,</p> <p style="text-align: center;"><i>Defendants.</i></p> | <p style="text-align: center;">CIVIL ACTION NO. 10 cv 8830 (PGG)</p> <p style="text-align: center;">REPORT AND AFFIRMATION DETAILING COMPLIANCE WITH COURT ORDER</p> |
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DAVID BIRNBAUM, of full age, declares and says under penalty of perjury:

1. I am the defendant David Birnbaum. I make this declaration based on first-hand knowledge and pursuant to the Court's order of July 15, 2011 (the "Order"), requiring the filing and service of a writing under oath setting forth in detail the manner and form in which they have complied with that judgment. I submit this on my own behalf as well as that of defendant Dabir International, Ltd. ("defendants").

2. Paragraph 1 of the Order lists various injunctions and restraints. Defendants have complied with all of them.

3. Paragraph 2 of the Order requires that defendants furnish to Plaintiffs a list of all persons, including contact information, with whom they have communicated regarding a proposed or actual business transaction since January 1, 2010. Defendants' ability to comply with this

provision of the Order was limited by the pendency of criminal charges against me, which have now been dismissed; our lack of counsel, which has since been remedied; and the continued custody of various records by law enforcement authorities in connection with their continuing investigation. Nonetheless we have as of this date supplied to plaintiffs a list of responsive names and, where available, contact information, which may be supplemented based on our counsel's ongoing analysis of electronic data from the files of our previous attorney.

4. Paragraph 3 of the Order states, "Before offering to sell any product or service to any person, Defendants shall first furnish a copy of this Judgment to any such person." We have not offered any product or service to any person.

5. Paragraphs 4 and 5 of the Order require the payment of damages and attorneys' fees to plaintiffs. As the Court is aware, plaintiff's application to set the amount of attorneys' fees is pending. In any event, defendants have not been able to comply with that part of the Order requiring the payment of damages because defendants do not have \$1.25 million. I detailed my financial situation in a Declaration dated October 11, 2011 and submitted to the Court in opposition to plaintiffs' motion for an appeal bond. The main thing that has changed since then is that I learned several days later that a joint bank account I hold with my wife was frozen as a result of enforcement actions by plaintiff arising from the judgment. There was \$128 in the account. Dabir International Ltd. has no assets.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: November 17, 2011
Brooklyn, New York


DAVID BIRNBAUM